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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,821	03/29/2004	Jean-Louis H. Gucret	08048.0048-000	1007
Thomas L. Irving ⁷⁵⁹⁰ FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315				
EXAMINER				
LE, HUYEN D				
ART UNIT		PAPER NUMBER		
3751				
MAIL DATE		DELIVERY MODE		
11/13/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/810,821

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32, 34, 35, 39, 42-66, 69-71, 74, 78 and 81-84 is/are pending in the application.
4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-11, 15, 17, 19, 21-24, 26, 29-32, 34, 39, 42-43, 47-51, 55, 57, 59, 61-64, 66, 69-71, 74, 78 and 81-84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-813)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims **withdrawn** from consideration are 4-6,12-14,16,18,20,25,35,44-46,52-54,56,58,60 and 65.

DETAILED ACTION

1. Claims are rejected under 35 U.S.C. 102(b) as being anticipated by.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 7-8, 15, 17, 19, 22-24, 26, 31-32, 39, 42-43, 47-49, 55, 57, 59, 62-64, 66, 71, 78, 81-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (5,588,447) in view of JP 62-114781 .

Gueret '447 discloses a device for applying product to nails comprising: a receptacle containing a nail product; an applicator 1 having a plurality of applicator elements 3 and 4, a stem 5, the applicator elements being secured to a housing 9 at the end of the stem 5, the housing 9 presenting a shape that diverges toward the outside (Fig. 2).

Although Gueret' 447 does not disclose applicator elements 3 and 4 having different periodic patterns, attention is directed to the JP 62-114781 reference. The JP 62-114781 discloses an applicator for applying a cosmetic product comprising a plurality of applicator elements 1 wherein the plurality of applicator elements 1 comprises at least two applicator elements 3 and 3', wherein each of the at least two

applicator elements 1 comprises at least one periodic pattern, wherein the at least one periodic pattern comprises at least one undulation, wherein a first periodic pattern repeats regularly along a first applicator element 3 and a second periodic pattern repeats regularly along a second application element 3', wherein the first periodic patterns is different the second periodic pattern (Fig. 2).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Gueret application device with bristles having different periodic patterns as taught by JP 62-114781, wherein doing so would be an obvious design choice.

Regarding claim 2, the applicator elements are bristles.

Regarding claim 3, at least two different periodic patterns comprise at least one periodic pattern of one bristle and at least one periodic pattern of another bristle distinct from the one bristle.

Regarding claim 7, each of the at least two different periodic patterns comprises at least one undulation having an amplitude that is different from an amplitude of an undulation of another of the at least two different periodic patterns (Figs. 4A and 4B).

Regarding claim 8, each of the at least two different periodic patterns comprises at least one undulation having a spatial frequency that is different from a spatial frequency of an undulation of another of the at least two different periodic patterns.

Regarding claim 9, at least 1 percent of the bristles comprise the same periodic pattern.

Regarding claim 15, at least two of the bristles comprise lengths different from one another (Fig. 3).

Regarding claim 17, one of the bristles comprises a circular cross-section.

Regarding claims 19 and 59, the bristle includes a hollow cross-section as shown in Fig. 7.

4. Claims 9-11 and 49- 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (5,588,447) in view of JP 62-114781.

Although Gueret in view of JP 62-114781 does not disclose that 1 percent to 99 percent or 20 percent to 80 percent or 30 to 60 percent of the bristles comprise the same periodic pattern, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a percentage of periodic pattern of the bristles within a certain range to best fit a particular applicator design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

5. Claims 21 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (5,588,447) in view of JP 62-114781.

Although the Gueret reference does not explicitly disclose the diameter of bristles in the range of 0.05 millimeter to 0.4 millimeter, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a diameter for the bristles within a certain range to best fit a particular (lipstick tube) design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

6. Claims 29-30, 34, 69-70 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret' 447 in view JP 62-114781 and further in view of Andrews (3,393,962).

Although the Gueret' 447 reference discloses a twisted core supporting the bristles 1, attention is directed to the brush applicator 1 having bristles 15 supported by a twisted core wire 12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Gueret' 447 brush applicator with a twisted core wire 12 as taught by Andrews for securing the bristles to the applicator.

Response to Arguments

7. Applicant's arguments filed on 07/28/2008 with respect to claims 1 and 42 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Huyen Le/
Primary Examiner
Art Unit 3751

HL